

## REMARKS

Applicants thank the Examiner for the thorough consideration given the present application. Claims 1-4, 6-14 and 16-21 are currently being prosecuted. The Examiner is respectfully requested to reconsider his rejections in view of the Amendments and Remarks as set forth hereinbelow.

## ALLOWABLE SUBJECT MATTER

It is gratefully acknowledged that the Examiner considers the subject matter of claims 10 and 20 as being allowable if rewritten in independent form. As the Examiner will note, claims 1 and 11 have been amended to set forth a combination of elements that clearly define patentable subject matter over the prior art cited in the Examiner's Office action. It is respectfully submitted that all of the claims of the present application are now in condition for allowance. If the Examiner does not agree that the present application is in condition for allowance, Applicants reserve the right to submit claims 10 and 20 in independent form at a later date.

## DRAWINGS

It is gratefully acknowledged that the Examiner has approved the Formal Drawings submitted by the Applicants. The drawings comply with the requirements of the USPTO. No further action is necessary.

### OBJECTION UNDER 35 USC 112

Claims 1 and 11 stand objected to for reciting a subcombination as compared to claims 5 and 15 which set forth a combination with respect to the leveler. As the Examiner will note, claims 1 and 11 have been amended to set forth a combination of the bottom pad assembly and the lever. The Examiner's objection has been obviated.

### REJECTION UNDER 35 USC 102

Claims 1-9 and 11-19 stand rejected under 35 USC 102 as being anticipated by Layne, US 4,349,992. Claims 11, 14 and 21 stand rejected under 35 USC 102 as been anticipated by Hahn et al, US 5,442,825. These rejections are respectfully traversed.

As set forth in the Examiner's rejections, it was indicated that a leveler does not need to be disclosed in view of the fact that the leveler was not positively claimed. As the Examiner will note, claims 1 and 11 have been amended to set forth a combination of elements wherein a leveler includes a leveler lip that is pivotally mounted on the leveler for facilitating the loading and unloading of a vehicle when a vehicle is parked adjacent to a loading dock. The leveler includes a ramp portion and a leveler lip pivotally mounted relative to the ramp portion on a distal end thereof for extending into a vehicle. The leveler lip of the leveler may be pivoted downwardly to be positioned within the clearance space for facilitating the loading and unloading of a vehicle when the vehicle is full and the leveler lip is not able to be lowered into the vehicle.

It is respectfully submitted that claims 1-4, 6-14 and 16-21 are not anticipated by the prior art cited by the Examiner. As set forth in Section 2131 of the MPEP Original Eight Edition, August 2001 Latest Revision February, 2003, page 2100-70:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. Of California*, 814 F2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)... “The identical invention must be shown in as complete detail as is contained in the ... claims.” *Richardson v. Suzuki Motor Co.*, 868 F2d 1226, 1236, 9 USQP2d 1913, 1920 (Fed. Cir. 1989).

The Layne patent is directed to a bumper seal 10 that is designed to work with a dock plate 20 with a fixed retaining lug 26 or a plurality of retaining lugs 26 spaced transversely relative to the dock plate 20. The lug 26 is designed to be positioned within the slot 25, when the dock plate 20 is properly positioned, to prevent lateral movement of the dock plate 20. The lug 26 is not hinged as suggested in the Examiner’s Office Action. See, column 2, lines 57-67 of the Layne patent.

The Hahn et al patent is directed to a dock leveler wherein a seal assembly 10 is disposed to extend along the length of the dock leveler for sealing a side portion thereof. The Hahn et al patent is not directed to a bottom pad for engaging a rear portion of a vehicle parked adjacent to a loading dock.

In contradistinction thereto, the present invention sets forth a combination of elements wherein a leveler includes a leveler lip that is pivotally mounted on the leveler for facilitating the loading and unloading of a vehicle when a vehicle is parked adjacent to a loading dock. The leveler includes a ramp portion and a leveler lip pivotally mounted relative to the ramp

portion on a distal end thereof for extending into a vehicle. The leveler lip of the leveler may be pivoted downwardly to be positioned within the clearance space for facilitating the loading and unloading of a vehicle when the vehicle is full and the leveler lip is not able to be lowered into the vehicle.

With regard to claims 4 and 14, the channel that is carried by the lower angle 21 is secured to the wall of the building B by means of the plurality of bolts 27. This disclosure would not anticipate the bottom draft plug as set forth in the claims.

With regard to claims 6 and 16, the seal 10 is not vertically adjustable, it is mounted in a fixed relationship to the building B by means of the plurality of bolts 27. This disclosure would not anticipate the adjustable features as set forth in the claims.

It is respectfully submitted that the prior art cited by the Examiner does not set forth each and every element as defined in the claims. Thus, the Examiner's rejection based on 35 USC 102 has been obviated.

#### NO PROSECUTION HISTORY ESTOPPEL

Claims 5 and 15 have been cancelled and the subject matter has been added to claims 1 and 11. No prosecution history estoppel would apply to the interpretation of the limitations set forth in claims 1 and 11 and the claims that depend therefrom in view of the fact that this subject matter has been continuously presented since the original filing date of the present application.

### REQUEST FOR INTERVIEW

If the Examiner has any questions with regard to this application, he/she is respectfully requested to contact the undersigned at (703) 205-8000 so that an interview can be arranged in connection with this application.

### CONCLUSION

In view of the above remarks, it is believed that the claims clearly distinguish over the patents relied on by the Examiner, either alone or in combination.

Since the remaining patents cited by the Examiner have not been utilized to reject the claims, but to merely show the state of the art, no comment need be made with respect thereto.

In view of the above amendments and remarks, reconsideration of the rejections and allowance of all of the claims are respectfully requested.

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

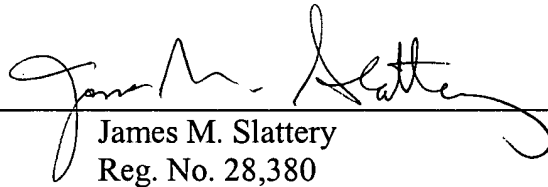
A prompt and favorable consideration of this Amendment is respectfully requested.

Pursuant to the provisions of 37 CFR 1.17 and 1.136(a), Applicants respectfully petitions for a one (1) month extension of time for filing a response in connection with the present application. The required fee of \$60.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By   
James M. Slattery  
Reg. No. 28,380

JMS/mmi

P.O. Box 747  
Falls Church, VA 22040-0747  
(703) 205-8000